




STATE OF NEVADA
FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF BUSINESS AND INDUSTRY
406 E. Second Street, Suite 3
Carson City, Nevada 89701-4758
(775) 687-4259 Fax (775) 687-6909

KENNY GUINN
Governor

fid.state.nv.us.

L. SCOTT WALSHAW
Commissioner

MEMORANDUM

Date: October 11, 2001
From: L. Scott Walshaw, Commissioner 
To: All Licensed Mortgage Brokers
Subject: AB 324

This memo is intended to set forth the provisions of AB 324, introduced by the Nevada Mortgage Brokers Association and passed during the 2001 Legislative Session. The following is a synopsis of the *substantive* provisions of the legislation that will have a *significant* impact on licensees under NRS Chapter 645B. A complete text of the legislation is available on the Legislative Counsel Bureau's internet site: www.leg.state.nv.us. Upon reaching the site click on "2001 (regular) session information", then "Bill Information", "History of Specific Legislation", "AB-324" and text of legislation "as enrolled".

Section 3 of the bill redefines "private investor" as a natural person or two or more investors who are relatives that provide their own money individually or jointly for investment in a loan secured by a lien on real property; unless they are acting on behalf of a partnership, corporation, or some other separate legal entity.

Section 4 of the bill requires, as an additional prerequisite for license renewal, evidence of at least 5 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license expires. This requirement applies to a licensee who is a *natural person* (i.e., sole proprietorship); or in the case where the licensee is NOT a natural person (i.e., corporation, partnership, etc.), it applies to each *natural person* who *supervises* the daily business of the licensee. At a *minimum* this will apply to all "qualified employees" and other managerial positions, if it is determined that such person is "supervising the daily business of the licensee".

Section 12 of the bill provides that a power of attorney given to a licensee by a private investor be *limited to a specific loan* and applicable for the term of that loan, *unless "the broker obtains written approval from the private investor to extend the term of the power of attorney to provide services for not more than one other loan and the written approval: (I) identifies the loan for which the power of attorney was executed and (II) identifies the loan for which the written approval is being given"*.

Note that the new power of attorney provisions of section 12 *do not apply* to a power of attorney that was executed before July 1, 2001 and otherwise complied with the provisions regarding powers of attorney that were in effect on October 1, 1999.

Section 13 of the bill requires the licensed mortgage broker to register each loan agent *annually*, after such agent has been initially registered with the Financial Institutions Division. The registration would expire "12 months after its effective date". The *initial registration of a loan agent* will continue to require a payment for the "actual costs and expenses incurred by the division" to perform a background investigation, presently \$70. Thereafter the statute will now require the payment of an annual registration fee "*by the person being registered*" of \$125. **Payment to be made not later than the date the registration is submitted.**

Please note that this section also requires registered loan agents to evidence the same 5 hours of "continuing education" imposed on natural person licensees, managers and qualified employees noted in section 4. This requirement will also be imposed effective July 1, 2002 and will be implemented using the same parameters discussed in Section 4, with the exception of the timing of the renewal process. At this time the division is attempting to determine the feasibility of certain registration renewal options to take effect after July 1, 2002 and will notify all licensee's at such time as it has determined the timing of registration renewals set to begin no earlier than July 1, 2002.

Section 14 of the bill sets forth the parameters under which a licensed mortgage broker is expected to exercise "reasonable supervision" over its registered mortgage agents. *Licensees employing registered loan agents should familiarize themselves with the provisions of this section as the amendments establish certain criteria which may prevent a licensee from being held accountable for certain actions of its agents. (see NRS 645B.670 (1)(g) as amended by section 16 of AB 324).*

Section 15 of the bill establishes format guidelines for the submission of written complaints to the division pertaining to licensed mortgage brokers.

Section 17 changes the "shall" to "may" for the imposition of disciplinary action by the division for commission of a "major violation".

Please note that Section 4 of the bill will be enforced beginning with the current licensing year. This means that those licensees who obtained their licenses effective July 1, 2001 must evidence compliance with Section 4 to obtain license renewal effective July 1, 2002. Those licensees obtaining their initial license subsequent to July 1, 2001 will be handled on a case by case basis. Please note that any licensee with other extenuating circumstances affecting evidence of compliance —(i.e., lack of course availability, change of control, change of “qualified employee” etc.) will also be handled on a case by case basis.

“Certified course of continuing education” is defined in the bill as a “course of continuing education which relates to the mortgage industry or mortgage transactions”. The bill requires that the courses must be “certified” by the “National Association of Mortgage Brokers or any successor in interest to that organization”. PLEASE NOTE THAT THE FINANCIAL INSTITUTIONS DIVISION WILL NOT BE INVOLVED IN THE CERTIFICATION PROCESS NOR WILL —BE THE SOURCE OF ANY CONTINUING EDUCATION COURSES UNLESS THE NATIONAL ASSOCIATION OF MORTGAGE BROKERS CEASES TO EXIST AND LEAVES NO “SUCCESSOR IN INTEREST”. It is anticipated that the division will be utilizing a list of certified courses as will be provided by the National Association of Mortgage Brokers to determine whether or not the continuing education courses evidenced in the renewal process are acceptable.

GIVEN THAT THE CONTINUING EDUCATION REQUIREMENTS WILL BE EFFECTIVE BEGINNING JULY 1, 2002, IT IS STRONGLY SUGGESTED BY THE DIVISION THAT LICENSEES CONTACT THE NATIONAL ASSOCIATION OF MORTGAGE BROKERS TO OBTAIN INFORMATION ON THOSE PARTIES THAT ARE OR WILL BE CERTIFIED TO PROVIDE COURSES OF CONTINUING EDUCATION.

Section 8 of the bill specifies that the annual examination of a licensee must include a formal “exit review” with the mortgage broker and that regulations must be adopted prescribing the standards for determining the examination rating and procedures for resolving any objection made by the licensee to the results of the examination. This section also specifies that the results of the annual examination may not be opened to public inspection pursuant to NRS 645B.090 until any objection made by the licensee has been resolved.

Section 9 of the bill extends the time to submit the financial statement required by NRS 645B.085 from 60 to 90 days after the licensee’s fiscal year end.

Section 10 of the bill inserts “private investor”, as defined in Section 3, into the provisions of NRS 645B.185.

Section 11 of the bill provides that the advertising disclosure requirements of NRS 645B.189 should only apply to those licensee’s using an advertisement that is “designed, intended or reasonably likely to solicit money from private investors” and that advertisements should otherwise include any other disclosures required by statute or regulation. All advertisements must continue to comply with NRS 598.0903 to 598.099, inclusive.